

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES ELLIS,

Plaintiff,

v.

COUNTY OF KERN, *et al.*,

Defendants.

No. 1:22-cv-00436-NODJ-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS AND
DEFENDANTS

(ECF No. 15)

Plaintiff Charles Ellis is a county jail inmate proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On May 4, 2022, the assigned Magistrate Judge screened the first amended complaint and issued findings and recommendations that this action proceed against Defendants Gifford, Alvarez, Boyd, and Lemon for excessive force and for denial of medical care in violation of the Fourteenth Amendment, and that all other claims be dismissed from this action based on Plaintiff's failure to state claims upon which relief may be granted. (ECF No. 9.) On September 18, 2023, the then-assigned District Judge issued an order adopting the findings and recommendations in part, and directed Plaintiff to either file an amended complaint indicating whether he intends to also bring a Fourth Amendment claim and the Defendants against whom he intends to bring that claim; or file a notice of intent to proceed on only the Fourteenth

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1 Amendment excessive force and denial of medical care claims identified in the findings and
2 recommendations. (ECF No. 12.)

3 On October 20, 2023, Plaintiff filed a notice stating that although he would like to add a
4 Fourth Amendment violation, he does not have access to the facility law library and cannot do
5 any research to solidify and plead a Fourth Amendment violation. (ECF No. 14.) Plaintiff
6 therefore chose to proceed only on the Fourteenth Amendment violations and sent notice to
7 proceed only on those violations. (*Id.*) Accordingly, on October 24, 2023, the assigned
8 Magistrate Judge re-issued findings and recommendations that this action proceed on Plaintiff's
9 first amended complaint against Defendants Gifford, Alvarez, Boyd, and Lemon for excessive
10 force and for denial of medical care in violation of the Fourteenth Amendment, and that all other
11 claims be dismissed from this action based on Plaintiff's failure to state claims upon which relief
12 may be granted. (ECF No. 15.) The findings and recommendations were served on Plaintiff and
13 contained notice that any objections were to be filed within fourteen (14) days after service. (*Id.*)
14 No objections have been filed, and the deadline to do so has expired.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
16 *de novo* review of this case. Having reviewed the file, the Court finds the findings and
17 recommendations to be supported by the record and by proper analysis.

18 Accordingly, IT IS HEREBY ORDERED as follows:

- 19 1. The findings and recommendations issued on October 24, 2023, (ECF No. 15), are
20 adopted in full;
- 21 2. This action shall proceed on Plaintiff's first amended complaint, filed May 2, 2022,
22 (ECF No. 7), on the following cognizable claims:
 - 23 a. Excessive force by Deputy Gifford (Detentions Deputy Sheriff), Deputy
24 Alvarez (Bailiff Deputy Sheriff), Boyd (Bailiff Deputy Sheriff), and Lemon
25 (Bailiff Deputy Sheriff) for the incident on March 23, 2022 in violation of the
26 Fourteenth Amendment; and
 - 27 b. Denial of medical care by Deputy Gifford (Detentions Deputy Sheriff), Deputy
28 Alvarez (Bailiff Deputy Sheriff), Boyd (Bailiff Deputy Sheriff), and Lemon

(Bailiff Deputy Sheriff) for the incident on March 23, 2022 in violation of the
Fourteenth Amendment;

3. All other claims and defendants are dismissed from this action for failure to state
claims upon which relief may be granted; and

4. This action is referred back to the Magistrate Judge for proceedings consistent with
this order.

DATED: December 26, 2023.


CHIEF UNITED STATES DISTRICT JUDGE